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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 GREGORY P. BURLESON,

11 Defendant.

Case No. 2:16-cr-00046-GMN-PAL

**ORDER**

(Mot. Appoint Atty – ECF No. 3124)

12 This matter is before the court on Defendant Gregory P. Burleson’s Motion to Appoint  
13 Attorney (ECF No. 3124). This Motion is referred to the undersigned pursuant to 18 U.S.C.  
14 § 3006A and LR IB 1-7(c) of the Local Rules of Practice.

15 On March 2, 2016, a federal grand jury returned a Superseding Indictment (ECF No. 27)  
16 against 19 defendants, including Burleson. The court severed the case into three groups for trial.  
17 Orders (ECF Nos. 1098, 1100–06, 1108–13). Burleson was included in the first trial group. *Id.*  
18 Mr. Burleson was convicted after a multi-week jury trial of multiple felony offenses on April 24,  
19 2017. Jury Verdict (ECF No. 1903). He was sentenced on July 26, 2017, to a lengthy term of  
20 imprisonment. *See* Mins. of Proceedings (ECF No. 2211); Judgment (ECF No. 2220). He filed a  
21 Notice of Appeal (ECF No. 2228) on August 1, 2017. On October 31, 2017, the United States  
22 Court of Appeals for the Ninth Circuit granted the motion of Mr. Burleson’s appointed trial  
23 counsel, Terrence M. Jackson, Esq., to be relieved as counsel of record and for appointment of  
24 new counsel. Order (ECF No. 2801). Chief District Judge Gloria M. Navarro subsequently  
25 appointed Mark Eibert, Esq., to represent Mr. Burleson for his appeal. Order (ECF No. 2881).

26 The defendants remaining in the second trial group, Cliven Bundy, Ryan Bundy, Ammon  
27 Bundy and Ryan Payne (the “second trial defendants”), proceeded to trial on October 30, 2017.  
28 Mins. of Proceedings (ECF No. 2796). The second trial defendants filed multiple Motions to

1 Dismiss (ECF Nos. 2883, 2906, 3082, 3085). *See also* Redacted Mots. (ECF Nos. 3057, 3058,  
2 3087, 3088).<sup>1</sup> On January 8, 2016, Judge Navarro granted the motions and dismissed this case  
3 with prejudice as to the second trial defendants. Mins. of Proceedings (ECF No. 3116); Judgment  
4 of Dismissal (ECF No. 3117). All pending motions by the second trial defendants were  
5 subsequently denied as moot as well as the related joinder motions by the defendants in the third  
6 trial group, Mel and Dave Bundy, Joseph O'Shaughnessy, and Jason Woods (the "third trial  
7 defendants"). *See* Mins. of Proceedings (ECF No. 3121). Judge Navarro indicated "the remaining  
8 Defendants [were] permitted to refile motions which must provide legal authority and factual  
9 information explaining how the requested relief is directly applicable to the remaining defendants  
10 no later than January 18, 2018. *Id.*<sup>2</sup>

11 On January 12, 2018, months after he was relieved as counsel of record, Burleson's former  
12 trial counsel, Mr. Jackson filed the current motion asking the court to appoint another attorney to  
13 represent Burleson before the district court while his appeal is ongoing before the Ninth Circuit.  
14 The request was made based on the dismissal of the second trial defendants and Judge Navarro's  
15 Minute Order (ECF No. 3121) allowing the "remaining Defendants" to refile motions. The motion  
16 argues that the facts, circumstances and legal issues of Burleson's case are virtually identical to  
17 the four dismissed defendants, and should result in the same remedy. Mr. Jackson asks the court  
18 to appoint experienced counsel appointed immediately to raise any post-trial motions that may  
19 exist and to confer with appellate counsel Mark Eibert, Esq., "concerning procedural and  
20 jurisdictional issues and to fully protect all of Defendant Burleson's rights." Mot. at 2.

21 Rather than appoint separate counsel, the court will expand Mr. Eibert's appointment to  
22 include any post-trial motion(s) before the district court that counsel deems appropriate, and that  
23 Judge Navarro grants leave to file, based on the Judgment of Dismissal (ECF No. 3117).

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24 <sup>1</sup> The remaining defendants in the third trial group, Mel and Dave Bundy, Joseph O'Shaughnessy, and  
25 Jason Woods, filed Motions for Joinder (ECF Nos. 3089, 3091, 3092, 3093, 3093) to Payne's Motion to  
26 Dismiss (ECF No. 3087), but joinder was denied based on their failure to demonstrate standing. *See* Jan.  
5, 2018 Mins. of Proceedings (ECF No. 3115).

27 <sup>2</sup> The Minute Order (ECF No. 3121) does not specify who are the "remaining Defendants." However, a  
28 January 8, 2018 Minute Order (ECF No. 3116) specifically identifies the "remaining Defendants" as the  
third trial defendants (Mel and Dave Bundy, O'Shaughnessy, and Woods). About one month later, the third  
trial defendants were dismissed on the government's motion. Feb. 7, 2018 Order (ECF No. 3179).

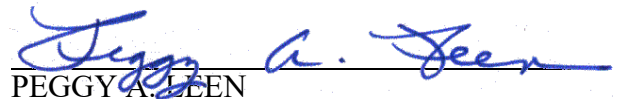
1 Accordingly, and for good cause appearing,

2 **IT IS ORDERED:**

- 3 1. Defendant Gregory P. Burleson's Motion to Appoint Attorney (ECF No. 3124) is  
4 **GRANTED.**
- 5 2. The limited appointment of Mark Eibert, Esq., as counsel for Defendant Gregory  
6 P. Burleson is expanded to include any post-trial motion(s) before the district court  
7 that counsel deems appropriate, and that Judge Navarro grants leave to file, based  
8 on the Judgment of Dismissal (ECF No. 3117).

9 Dated this 29th day of May, 2018.

10 Nunc Pro Tunc Date: January 15, 2018

11   
12 PEGGY A. LEEN  
13 UNITED STATES MAGISTRATE JUDGE  
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